**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVISION APPLICATION NO. 39 OF 2007**

State of Goa. ... Applicant

versus

Govind @ Manoj Mulgaonkar,
s/o Manhar Mulgaonkar,
R/o H. No. 274, Talematha,
Pale, Bicholim, Goa. ... Respondent

Ms. Winnie Coutinho, Public Prosecutor for the Applicant.

Mr. Deepak Gaonkar, Advocate for the Respondent.

**CORAM : N. A. BRITTO, J.**

**DATE : 2ND AUGUST, 2007.**

**ORAL ORDER**

Heard Ms. Winnie Coutinho, the learned Public Prosecutor on behalf of the Applicant and Mr. Deepak Gaonkar, the learned Counsel on behalf of the Respondent/Accused.

2. This revision is directed against the Order dated 13-11-2006 of the

learned Additional Sessions Judge, Panaji, by which the learned Additional Sessions Judge has discharged the Accused under Section 306 I.P.C. and has also ordered the framing of charge against the Accused under Section 498-A I.P.C.

3. The case under Section 306 I.P.C. is triable by the Court of Sessions but a case under Section 498-A is triable by a Judicial Magistrate, First Class and consequently the Accused was ordered to be tried under Section 498-A by the learned J.M.F.C.

4. Facts disclosed prima facie show that the Respondent/Accused was in love with one Shubangi Talekar but broke off the said relationship in December, 2004 or thereabout and got married with the deceased on 18-2-2005 and the latter committed suicide within a period of two months i.e. on 8-4-2005 by hanging. Post mortem conducted subsequently confirmed that the deceased had in fact died due to asphyxia as a result of hanging.

5. The complaint came to be filed by the brother of the deceased Khushali Gaude on 10-4-2005.

6. On 6-4-2005 the deceased is stated to have called cousin Rupali to her house and when told about her inability to come, the deceased is stated to have told her that the Accused, her husband was not talking to her properly and

when asked her to disclose the reason, she refused to disclose the same.

7. The statement of the grandmother of the deceased was also recorded and which, inter alia, shows that on one occasion when she visited the house of the deceased and the Accused, where presumably only two of them were residing, she noticed that the deceased was locked inside the house and the key was taken by the Accused and thereafter the deceased told her, with tears in her eyes that her husband, the Accused was not treating her well and was frequently abusing and assaulting her, and not allowing her to visit the neighbours or the neighbours to visit her and was locking her inside the house. The deceased also told her that the Accused was having relations with a lady from the same ward and that she had told the Accused to give up the said relationship or else she would come to the house of the said lady, and, from then onwards the Accused started locking her in the house.

8. The learned Additional Sessions Judge, inter alia, referred to the statements of Khushali Gaude, the brother of the deceased, Chandrabhagi, the grandmother of the deceased and observed that the said statements clearly demonstrated that the deceased Smt. Manjeeta alias Rajeshree was physically and mentally harassed and tortured by the Accused and the said statements also revealed that after their marriage the deceased was not happy but was gloomy and the Accused did not accompany her anywhere and detained her in the house and

was physically assaulting her and the said material was ex facie sufficient to arrive at the conclusion at this stage that the Accused was harassing and torturing the deceased and therefore an offence under Section 498-A I.P.C. was made out against the Accused. As far as this finding is concerned, there has been no challenge to the same.

9. However, the learned Additional Sessions Judge, in relation to Section 306 I.P.C. observed that the material collected in the course of investigations did not show the ingredients of the offence of abetment were satisfied. The learned Additional Sessions Judge also noted that in order to commit the offence under Section 306 I.P.C. it was necessary that the prosecution must prima facie establish that the Accused had instigated the deceased by his acts or illegal omission or with continued course of conduct which compelled the deceased to commit suicide and the deceased was left with no alternative but to commit suicide.

10. The learned Public Prosecutor submits that the learned Additional Sessions Judge did not consider the effect of Section 113-A of the Evidence Act in coming to the conclusion that there was no prima facie evidence produced to frame charge under Section 306 I.P.C. The learned Public Prosecutor further submits that continued harassment on the part of the Accused compelled the deceased to commit suicide. The learned Public Prosecutor has placed reliance on

the case of **The State of Punjab** v. **Iqbal Singh and others**(AIR 1991 SC 1532) wherein the Apex Court, considering the facts of the case that severe beating was given to the deceased a day before she committed suicide, came to the conclusion that the husband was responsible for creating circumstances which provoked or forced the wife to commit suicide.

11. On the other hand, the learned Counsel on behalf of the Accused, relying on **Nilakantha Pati** v. **State of Orissa**(1995 CRI. L. J. 2472) has submitted that presumption of abetment under Section 113-A of the Evidence Act is not mandatory. In this case the Orissa High Court has held that the presumption of abetment under Section 113-A of the Evidence Act can be raised where it is proved that the wife committed suicide within seven years from the date of her marriage but the said presumption is rebuttable. The learned Judge held that the legislature used flexible expression as "the Court may presume", having regard to all the circumstances of the case and did not use the expression "shall presume". The Court referred to Section 4 of the Evidence Act and observed that the import of the expression "may presume" is that the Court may, either regard the fact in question as proved, unless and until it is disproved, or may call for proof of it and that parliament in its wisdom did not leave it at that by using the expression "may presume" alone, but has supplemented the same by using further expression "having regard to all the other circumstances of the case" which casts a positive responsibility on the Court to take into consideration all the

other circumstances of the case also, namely the circumstances which may be there besides the two basic circumstances mentioned in the section itself which are suicide within seven years of marriage and proof of cruelty, in deciding whether the presumption of abetment of suicide should be drawn in a particular case from the proof of cruelty, which itself is separately punishable under Section 498-A I.P.C. The learned Counsel on behalf of the Accused has also submitted that the facts, do not show that the Accused intended to drive the deceased to suicide, and since the element of intention is missing, the Accused could not be charged under Section 306 I.P.C. The learned Counsel has also placed reliance on **Kartar Singh and others** v. **Central Bureau of Investigation**(2006 CRI. L. J. 4099). That was a case where the deceased had committed suicide by hanging herself from the ceiling of her room in her matrimonial home. There were allegations of cruelty and harassment against the petitioners in-laws which drove the deceased to commit suicide. The Court held that there was no material to show that the petitioners had the mens rea to drive the deceased to commit suicide and although the deceased could be said to have been treated harshly and unfairly it could not be said that the petitioners in laws had instigated, goaded or incited her to commit suicide and therefore order framing charge under Section 306 was set aside.

12. Reverting to the law on the subject, it may be stated that Section 306 I.P.C. deals with abetment of suicide and provides that if any person commits

suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Abetment has been defined by Section 107 I.P.C. It provides that a person abets the doing of a thing, who -

Firstly.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by an act or illegal omission, the doing of that thing.

It is not necessary to refer to the two Explanations below Section 107 I.P.C.

13. Section 113-A of the Indian Evidence Act, 1872 deals with presumption as to abetment of suicide by a married woman and provides that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she has committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. The Explanation below Section 113-A of the Evidence Act provides that for the purpose of this Section “cruelty” shall have the same meaning as in

Section 498-A of I.P.C., and, the expression "cruelty" in Section 498-A means, inter alia, and to the extent it is relevant to this case, any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman.

11. Section 498-A I.P.C. and Section 113-A of the Indian Evidence Act, 1872 came to be brought on the Statute Book by virtue of Act 46 of 1983 w.e.f. 25-12-1983. Section 113-A deals with presumption, known as presumption of facts. Presumption of facts are inferences from certain facts drawn from the experience and observation of the human mind, human action, the usages and habits of society and ordinary course of human affairs. The Court, has, however, discretion on facts of each case to draw presumption of facts. The learned Additional Sessions Judge had rightly noted that in order to commit offence under Section 306 I.P.C., it is necessary that a prosecution must prima facie establish that the Accused had instigated the deceased by his acts or illegal omission or with continued course of conduct which compelled the deceased to commit suicide and the deceased was left with no other alternative but to commit suicide(Emphasis supplied).

12. There is no doubt that mens rea or intention is one of the ingredients of Section 306 I.P.C. As observed by the Apex Court in the case of **Sanju alias Sanjay Singh Sengar** v. **State of Madhya Pradesh**(2002 CRI.L.J. 2796) the

word “instigate” denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite and the presence of mens rea therefore, is the necessary concomitant of instigation. Nevertheless it must be stated that intention or mens rea can rarely be proved by direct evidence and in most of the situations the intention can be proved only by inference from proved facts. Here was a case where the learned Additional Sessions Judge had come to the conclusion that an offence under Section 498-A was prima facie proved against the accused and the said evidence according to the learned Additional Sessions Judge showed that the deceased was physically and mentally harassed and tortured by the accused. The material produced by the prosecution and referred to in para 7 hereinabove prima facie shows that the Accused had made life impossible for the deceased and in such a situation the deceased must have been driven to desperation to such an extent that she was compelled to take the extreme step and hang herself and end her life.

13. In the case of **The State of Punjab** v. **Iqbal Singh and others**(supra) the Apex Court came to the conclusion that Section 113-A was inapplicable in the absence of proof that the death had taken place within seven years of marriage. That was a case when husband had persistently made dowry demand from the wife, beating, harassing her and creating an atmosphere of terror from her and the wife ultimately set herself and three children ablaze and the Apex Court came to the conclusion that the husband by his wilful conduct had

created an atmosphere which forced the wife to commit suicide. The same could be said in this case at this stage and considering the same, in my view, the learned Additional Sessions Judge was certainly not justified in discharging the Accused under Section 306 I.P.C.

14. Consequently, the Revision Application is allowed. The impugned Order to the extent that it has discharged the Accused under Section 306 I.P.C. is hereby set aside. As a result, the learned Additional Sessions Judge will have now to try the Accused under Section 498-A as well as Section 306 I.P.C., in accordance with law.

15. Records and Proceedings called for from the trial Court will be directly forwarded to the Court of Additional Sessions Judge, Panaji, under intimation to the learned J.M.F.C.

16. The Accused need not appear before the learned J.M.F.C. on 10th instant but will now appear before the learned Additional Sessions Judge(FTC), Panaji on 23-8-2007 at 10.00 a.m.

**N. A. BRITTO, J.**

**RD**